



The Legal Profession Reform Index

For

Georgia

June 2005
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INTRODUCTION

The American Bar Association/Central European and Eurasian Law Initiative [hereinafter “ABA/CEELI”] developed the Legal Profession Reform Index [hereinafter “LPRI”] to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyer identified by organizations such as the United Nations and the Council of Europe [hereinafter “CoE”]. The LPRI factors provide benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The Index is primarily meant to enable ABA/CEELI or other legal assistance implementers, legal assistance funders, and the emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA/CEELI’s companion Judicial Reform Index [hereinafter “JRI”], will also provide information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights, and legal education reform.

The LPRI assessment does *not* provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department’s *Human Rights Report* and Freedom House’s *Nations in Transit*. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country’s legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytical process is not a statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country’s legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms “legal professional” and “lawyer.” The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world’s legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As a result, ABA/CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interest’s vis-à-vis the state. ABA/CEELI utilizes the JRI, which focuses on the process of reforming the judiciaries in emerging democracies and has recently developed the Prosecutorial Reform Index [hereinafter “PRI”] to assess reform of the prosecutorial segment of the legal profession in transitioning states.

Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term “lawyer”. In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience

before courts. For example, in France, there are three main categories of advocate lawyers: *avocat*, *avoués à la Cour*, and *advocates aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoués à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoués à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *advocates aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conceil d'Etat* (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, other factors further complicated efforts to define the term "lawyer", including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union [hereinafter "CCBE"], there were 22,048 lawyers currently practicing law in Poland in 2002. Of that number, only 5,315, or 24 percent, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis, i.e., excluding government lawyers and corporate counsel. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

ABA/CEELI's Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, *Judicial Reform Index: Manual for JRI Assessors*. (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nation's BASIC PRINCIPLES ON THE ROLE OF LAWYERS and the Council of Europe's RECOMMENDATIONS ON THE FREEDOM OF EXERCISE OF THE PROFESSION OF LAWYER and on ABA/CEELI's more than 15 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.

To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology, and that provides flexible guidance on areas of inquiry. Particular emphasis was put on avoiding

higher regard for common law concepts related to the structure and function of the profession of lawyers. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool¹ in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, LPRI and new PRI employ factor-specific qualitative evaluations; however, these assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.² Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways, but not in others, it is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRI's are updated – within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will give ABA/CEELI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA/CEELI has formed a committee that includes the assessor and select ABA/CEELI Washington, DC staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials are meant to help issue-spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002.

² For more in-depth discussion on this matter, see C.M. Larkin, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 American Journal of Comparative Law. 605, 611 (1996).

specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, ABA/CEELI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Third, combined with ABA/CEELI's JRI, the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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The Georgia LPRI assessment was conducted from March 15, 2005 to June 23, 2005 by ABA/CEELI Rule of Law Liaison to Georgia Bettina Brownstein, with the support of ABA/CEELI Staff Attorneys Marika Bandzeladze, Valerie Amisulashvili, Tatiana Pataraia, and Intern Zura Janjgava. The team received strong support from members of the ABA/CEELI staff in Tbilisi and Washington, D.C., including Country Director Marilyn Zelin and Associate Country Director for ABA/CEELI's Caucasus Programs, Claude Zullo. ABA/CEELI Legal Analyst and LPRI Coordinator Dr. Carson Clements provided research, analytical assistance, substantive law provisions, and prepared and edited the report for publication. ABA/CEELI expresses its gratitude to the many advocates, judges, law professors, government officials, and representatives of the donor community who met with the team and agreed to be interviewed for this project. In all, more than 66 judges, advocates, journalists, and heads of NGOs were interviewed – a large number of whom were from the regions. Lists of the persons interviewed and the documents reviewed are on file at the Washington, DC office of ABA/CEELI.

GEORGIA BACKGROUND

Georgia is a south Caucasus country that borders Russia, Armenia, Turkey, and Azerbaijan. Georgians trace their roots back to mythic Prometheus and Jason. The first settlements in modern day Georgia date back more than two million years. Georgia's early story is one of invasion and domination by Romans, Turks, and Persians, alternating with periods of unification under strong kings. Georgia was the second country to convert to Christianity – after Armenia. In the 13th century, Georgia was subjugated by the Mongols. At the beginning of the 19th century, it was annexed by Russia. Georgia asserted its independence for a few years in 1918, but once again succumbed to Russian domination as the Soviet Army captured the country. In 1991, with the collapse of the Soviet Union, Georgia became independent, but civil war soon broke out with devastating social and economic effect. Two regions – South Ossetia and Abkhazia -- broke away with Russian support and these two regions remain separate. Over two hundred thousand internally displaced persons from those regions fled to Georgia, where they still suffer economic deprivation.

In 1995, former Soviet Foreign Minister, Eduard Shevardnadze, was elected President after an interim period as head-of-state. He succeeded the ultra-nationalist leader Zviad Gamsahurdia, who was deposed in 1992. Shevardnadze led the country until 2003 when Michael Saakashvili, then 35-years-old, came into office on the tide of the so-called “Rose” Revolution. The Rose Revolution brought optimism and promise of democratic reform and an improved economy. While many strides toward democracy have been made—notably the establishment of relatively uncorrupt police force -- the country is still beset with high unemployment, corruption, and poverty.

Georgia is a republic with a unicameral, parliamentary form of government. The country is organized into regional and urban administrative units. Since independence, Georgia has made a major effort to advance its legal profession and the rule of law. Georgia adopted a new CONSTITUTION in 1995 that contains guarantees of basic human rights -- including the right to effective assistance of counsel for those accused of committing a crime. It mandates the separation of powers and the independence of the judiciary. The Constitution was amended in February 2004 in order to establish a new governmental structure. The Government of Georgia is now composed of the Prime Minister and Ministers. CONSTITUTION, Article 78. The President serves as head-of-state and exercises special jurisdiction over the Ministry of Interior and the Ministry of Defense. The Prime Minister heads the remaining ministries. The CONSTITUTION was amended again in 2005 to reduce the number of members of Parliament from 235 to 150 of which 100 MPs are proportionally elected and 50 MPs are elected by a majority system, for a four-year term. CONSTITUTION, Article 49. President Saakashvili's party currently enjoys an approximately 70% majority in the Parliament.

Georgia has a Supreme Court, a Constitutional Court, and courts of first and second instance. Judges are appointed by the government for a term of ten years. The legal system is based on civil law.

In 2001, Georgia became a member of the Council of Europe [hereinafter “CoE”]. As a member of the CoE, it must bring its legislation into conformity with European standards. It is also a party to the EUROPEAN CONVENTION ON HUMAN RIGHTS, violations of which can be brought before the European Court on Human Rights in Strasbourg after all domestic remedies have been exhausted.

HISTORICAL CONTEXT

Almost 15 years after the collapse of the Soviet Union, the Georgian legal profession is still struggling with the legacy and problems of the Soviet system. During the Soviet era, the

prosecutor controlled the outcome of cases when a perceived political interest was at stake or when one party had the right personal connections. Although the Soviet Constitution included a right to counsel and the presumption of innocence in criminal cases, in practice, the advocate's role was circumscribed and his/her representation more *pro forma* than real. Despite the constitutional recitation of the presumption of innocence, the guilt of the defendant actually was assumed, and the advocate was simply there to negotiate a more lenient sentence, if possible. In political cases, Communist Party leaders would instruct the judge how a case should be decided. Such directives were rarely ignored. Civil cases were largely confined to domestic matters and minor disputes involving property, since there was state ownership of large commercial and industrial interests. Private legal practice, as it is known in western countries, was largely nonexistent.

In 2001, Georgia enacted a LAW ON ADVOCATES, which guarantees the independence of the legal profession. This law regulates the practice of law, establishes requirements for admittance to the profession, and provides for an integrated, national, bar association which is charged with administering the bar examinations, licensing attorneys, and disciplining attorneys. In 2003, the first Georgian Bar Examination was administered. This year, significant strides were made toward the formation of a unified bar association.

OVERVIEW OF THE LEGAL PROFESSION

The following categories of legal professionals are present in Georgia:

- Prosecutors, who oversee investigations and prosecute criminal defendants;
- Investigators, who investigate crimes and are a part of the law enforcement apparatus of the police department or the prosecutor's office;
- Judges, who preside in the common courts, appellate courts, or the Constitutional Court;
- Advocates, who are independent legal professionals and represent clients in criminal and civil cases before the court;
- Jurists, who work for NGOs, companies, or government agencies and may, but generally do not, represent clients in court;
- Notaries, who are authorized *inter alia* to authenticate signatures on documents, approve written agreements, issue certificates of property ownership, issue certificates of inheritance, approve translation of documents, and draft documents for clients. LAW ON NOTARIES, Articles 1, 4; and
- Representatives, who represent clients in civil cases before the court, but do not possess a law degree, CODE OF CIVIL PROCEDURE, Article 93.

The LAW ON ADVOCATES, enacted on June 20, 2001, defines the practice of law to "include the provision of legal advice to clients [and] representation of clients in courts, arbitration, and preliminary detention facilities in constitutional, criminal, civil, or administrative cases" LAW ON ADVOCATES, Article 2. Article 10 of the LAW ON ADVOCATES provides that an advocate have a law degree, pass the Bar Examination (or Judicial Qualification Examination), give the oath of an advocate, and have at least one year of experience. Article 1 of the LAW ON ADVOCATES requires an advocate to be a member of the Georgian Bar Association [hereinafter "GBA"].

While presently a person does not need to be an advocate, nor have any other qualification, to represent another person or entity in a civil case before the court, this situation will change

beginning June 1, 2006, in accordance with Article 40.4 of the LAW ON ADVOCATES, which provides that as of that date any person who has not passed the Bar Examination "is prohibited from practicing law". Without passing the Bar Examination, one can not become a member of the GBA and the status of advocate is restricted to members of the GBA. The provision of the CODE OF CIVIL PROCEDURE that allows non-advocates to represent clients as well as similar provisions in other laws will be deleted.

For reasons outlined in the LPRI introduction, the scope of this report is limited to advocates, although some factors, such as those pertaining to legal education and preparation for practice, can be applied to the broader legal profession as outlined above.

ORGANIZATIONS OF LEGAL PROFESSIONALS

Although the LAW ON ADVOCATES was enacted in 2001, Georgian attorneys did not begin to prepare for the establishment of a bar association until late 2004 with meetings sponsored by ABA/CEELI. The inaugural congress of the Georgian Bar Association [hereinafter "GBA"] was convened February 27, 2005. The purpose of the congress was to establish the GBA with the adoption of a Charter and the election of officers and committee members. Nine hundred and four persons attended. The inaugural meeting continued on March 11-12, 2005. However, at the end of both sessions, due to the lack of clarity in certain provisions of the LAW ON ADVOCATES, there were questions regarding the status of the GBA. This situation remained at the time this LPRI assessment was conducted.

Since the inaugural congress, there has been resistance to the GBA-- as constituted after the February and March meetings of the GBA -- on the part of many lawyers. At least two lawsuits have been initiated: one in the common court challenging the legitimacy of the formation of the GBA because of procedural defects that occurred during its inaugural congress; and the second in the Constitutional Court challenging the constitutionality of those provisions in the LAW ON ADVOCATES mandating an integrated bar association for the country. However, as of June 30, 2005, the two main opposing factions of advocates appear to have reached an agreement that will allow the current bar association to continue to exist. If this agreement is finalized, the common court case will be withdrawn and a new inaugural assembly convened for the purpose of legitimately adopting the GBA Charter and electing GBA officers.

The lack of a functioning bar association has prevented the implementation of certain provisions of the LAW ON ADVOCATES. Most significantly, there has not been a bar examination administered since the fall of 2004. In addition, no code of ethics has been adopted. Nor has any attorney been licensed under the new system.

There is a Collegium of Advocates [hereinafter "Collegium"], which dates back to 1922, and professes to have 500 members from all areas of the country. This number is reduced from the 1500 it claims to have had just prior to the inaugural session of the GBA. The Collegium presently functions as an independent, voluntary association of advocates who elect their president and other officers. CHARTER OF THE COLLEGIUM OF GEORGIA. It collects dues from its members in the form of a percentage of legal fees individually earned and in return provides office facilities and publishes a newsletter. Its president supports the new bar association and has urged the Collegium's members to take the Bar Examination and join the GBA.

The most successful and influential professional association in Georgia is the Georgian Young Lawyers Association [hereinafter "GYLA"]. The GYLA is a democratic, voluntary association with approximately 800 members, who are required to be less than 40 years of age. GYLA CHARTER, Articles 1, 6-8. The GYLA has been in existence since 1994 and enjoys a reputation for attracting bright, young, competent lawyers who are uncorrupt, who fight against corruption in the government, and fight for human rights. The GYLA is independent of government influence. The



GYLA's main office is in Tbilisi, with two branches in Kutaisi and Batumi (West Georgia) and five regional offices in Rustavi, Dusheti, Telavi, Gori and Ozurgeti. Its offices have libraries, which they make available to other lawyers. In some offices, GYLA attorneys offer free legal consultations and/or representation of indigent clients. For purposes of transparency it is important to note that the GYLA receives funding from ABA/CEELI and other organizations for a variety of programs and projects.

SUMMARY FINDINGS

Georgia has made enormous strides in casting off the country's Soviet legacy and promoting the rule of law. Particularly laudable are the passage of the LAW ON ADVOCATES and the existence of a legal profession that values its independence and is determined to maintain it. However, the legal profession is plagued by two overriding problems: poverty and prosecutorial influence over a subservient and discredited judiciary. These problems eclipse all others faced by the legal profession. However, other significant problems perceived, as well as real, include corruption of judges and lawyers; the continued uncertainty concerning the bar association; the lack of enforcement of civil judgments; and the poor legal education most law students receive that fails to prepare them for the practice of law. Finally, government interference in court proceedings undermines the independence of judges.

The difficulty in enforcing judgments in civil cases undermines the public's confidence in the judicial system. The law does provide for the execution of judgments; however, even if a plaintiff prevails and obtains a recovery, in the vast majority of cases, the plaintiff will lack the financial means to avail him/herself of this law if the defendant resists satisfying an adverse judgment. This naturally leads to unwillingness by people to resort to the courts for assistance. In any case, most people cannot afford the services of a lawyer, and clients do not have the money to pay a sufficient amount to allow their lawyers to draw upon the resources necessary for competent representation. There is, therefore, a large, unsatisfied need for legal representation. Moreover, there is little in the way of legal aid available for the indigent in either civil or criminal cases.

There is a law on private arbitration, and arbitration is recognized as a viable alternative to litigation in Georgia, although it is not widespread. Lawyers often recommend arbitration to their clients. Arbitration awards are enforceable in the same manner as civil judgments. There is no mediation in Georgia that uses private mediators, although judges report that they often engage in informal mediation of cases.

In general, the public lacks knowledge about how the judicial system operates. This enables unscrupulous advocates to manipulate their clients and causes the public to have a jaundiced view of the legal system. The public (including advocate respondents) believes that significant percentages – around 20 percent of advocates -- are corrupt. This situation seems unlikely to change until the Georgian Bar Association [hereinafter "GBA"] adopts and enforces a code of ethics.

In order to comply with international standards, the government, along with its numerous other reform measures, is in the process of reforming the country's entire educational system, including legal education. As a part of this process, the government is seeking a more rigorous accreditation process for schools; a limit on the number of students admitted; and national, standardized entrance examinations. The law faculty curriculum will be improved, and it is likely that it will include practical skills training. At this stage, the government has in place institutional accreditation, and many unaccredited private law faculties have closed as a result. These government measures should eventually improve the quality of legal professionals.

Both advocates and judges voice a fervent desire to have a legal system free from governmental interference and corruption. Virtually every advocate respondent complained of the pervasive corruption in their profession and among the judiciary and subservience of the latter to the prosecutors and government. They seemed hugely disappointed that government interference and corruption still exist after the election of President Saakashvili when hopes were high that these practices would at least be diminished, if not in fact ended. Surprisingly, many stated that the situation was worse now than it had been during former President Eduard Shevardnadze's term in office.



ABA/CEELI will continue to monitor the situation and determine how the development of the GBA and implementation of the LAW ON ADVOCATES will affect, positively or negatively, the factors discussed in the body of this report.

TABLE OF FACTOR CORRELATIONS

While these correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI emphasizes that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA/CEELI views the LPRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

I. Professional Freedoms and Guarantees		
Factor 1	Ability to Practice Law Freely	<i>Neutral</i>
Factor 2	Professional Immunity	<i>Positive</i>
Factor 3	Access to Clients	<i>Neutral</i>
Factor 4	Lawyer-Client Confidentiality	<i>Positive</i>
Factor 5	Equality of Arms	<i>Neutral</i>
Factor 6	Right of Audience	<i>Neutral</i>
Factor 7	Academic Requirements	<i>Neutral</i>
Factor 8	Preparation to Practice Law	<i>Negative</i>
Factor 9	Qualification Process	<i>Neutral</i>
Factor 10	Licensing Body	<i>Neutral</i>
Factor 11	Non-discriminatory Admission	<i>Neutral</i>
Factor 12	Formation of Independent Law Practice	<i>Positive</i>
Factor 13	Resources and Remuneration	<i>Negative</i>
Factor 14	Continuing Legal Education	<i>Negative</i>
Factor 15	Minority and Gender Representation	<i>Neutral</i>
Factor 16	Professional Ethics and Conduct	<i>Negative</i>
Factor 17	Disciplinary Proceedings and Sanctions	<i>Negative</i>
Factor 18	Availability of Legal Services	<i>Negative</i>
Factor 19	Legal Services for the Disadvantaged	<i>Negative</i>
Factor 20	Alternative Dispute Resolution	<i>Neutral</i>
Factor 21	Organizational Governance and Independence	<i>Neutral</i>
Factor 22	Member Services	<i>Neutral</i>
Factor 23	Public Interest and Awareness Programs	<i>Neutral</i>
Factor 24	Role in Law Reform	<i>Neutral</i>

I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

Conclusion	Correlation: Neutral
<p>The majority of legal professionals report that advocates generally are able to practice civil law without interference, intimidation, or sanction--unless one of the parties is a prominent governmental official or has a connection with a prominent member of the government. Although reports of direct intimidation are rare, reports of indirect interference, through direct pressure on the judiciary from the prosecution in criminal cases and from the government in some civil cases were prevalent, negating any legal guarantees of independence in the profession.</p>	

Analysis/Background:

The independence of the legal profession is established by the Constitution of Georgia [hereinafter "CONSTITUTION"] and the LAW ON ADVOCATES. The CONSTITUTION, which was adopted in 1995, guarantees the separation of powers. CONSTITUTION, Article 5 (4). The LAW ON ADVOCATES, which was adopted in 2001 codifies the independence of the advocate in several articles. For example, Article 1 states that "An advocate is a person of independent profession, who obeys the laws and professional ethics and, is a member of the Georgian Bar Association." LAW ON ADVOCATES, Article 1 (2). Article 3 (a-h) lists the main principles of an advocate's profession. These include "legitimacy, independence, and freedom of legal practice, nondiscrimination and equality of all advocates, and noninterference in advocate's activities". The LAW ON ADVOCATES, Article 38 (1) reiterates that "An advocate is independent in his/her activities and interference in an advocate's professional activities is prohibited." LAW ON ADVOCATES, Article 38 (1).

While most advocates report that they do not face direct interference or intimidation by government authorities, they do express frustration at their inability to effectively represent their clients in criminal cases in the face of almost total submission by judges to the will of the prosecutor. For instance, advocates report their inability to prevent their clients from being sentenced to pretrial detention if the prosecutor requests it. In addition, prosecutors steer defendants away from stronger, more effective advocates to more inexperienced or less skillful ones. The right to retain an advocate of one's choice is set out in Article 78 (3) ("a body in charge of proceedings has no right to restrict a suspect or the accused in the choice of the defense counsel") of the CODE OF CRIMINAL PROCEDURE, although most people are ignorant of their right to choose their own advocate or too afraid to assert themselves against the prosecutor. One young criminal defense advocate also said she was worn down by the personal animosity shown her by prosecutors as she zealously represented her clients. She said, "They hate us [referring to her and her partner]. Why don't they just let us do our jobs? We are trying so hard for our clients. I am afraid they will do something to us like put us in prison."

Civil practitioners generally do not cite the same type of interference with the judiciary unless one of the parties is a government official or a friend of a government official. Except in the instances cited above, no advocate reported any direct personal or professional harassment from the government or prosecutor. No law firm reported any loss of business due to government interference.

Many legal professionals also point to corruption in both the judiciary and legal profession as another impediment to justice. This corruption purportedly takes the form of payment by advocates of bribes to the judge for a favorable outcome and secret agreements among the lawyers to prevent settlement of a case (which would lessen their fees) or to arrange in advance the outcome of a case. Examples of this are an advocate not informing his client that the case could settle and going to trial unnecessarily, or agreeing beforehand with opposing counsel and the judge to the outcome of a case, but still taking the matter to trial. While the perception is that corruption among advocates is common, no one could cite any specific occurrence of it. In general, the situation was summed up this way: under the government of former President Shevardnadze, there was more corruption and the judiciary was subject to less pressure from the government; now, under President Saakashvili, there is less corruption, but more improper interference from the government. However, some respondents disagreed with this assessment and opined that there was more corruption under Shevardnadze and an equal amount of improper influence from the government on the judiciary in both regimes.

Despite the very commonplace interference by the prosecutor, advocates maintain that whether an advocate is independent or not depends on the individual's strength of character. Those advocates who enjoy a reputation for integrity are the objects of considerable admiration. However, even an uncorrupt advocate is subject to attack on his/her reputation. It is not uncommon for the unsuccessful party to a lawsuit or for his/ her advocate to explain the loss by accusing the opposing counsel of having bribed the judge. Under this scenario, an advocate is not judged on ability, nor are the merits of the case taken into account: instead, a good advocate is seen as one who has a "good relationship" with the judge. A good relationship does not necessarily mean a monetary one. It can indicate friendship, or some familial tie.

Factor 2: Professional Immunity

Lawyers are not identified with their clients or the clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

Conclusion	Correlation: Positive
The law provides immunity for advocates. There are no reported instances of reprisal against advocates for representing a client or for statements made in good faith on behalf of a client. Advocates are sometimes questioned by the public for representing an unpopular individual (such as a defendant in a criminal rape case), but no one reports any adverse consequences as a result.	

Analysis/Background:

The LAW ON ADVOCATES guarantees advocates immunity from statements made in either written or verbal form and from being called as a witness in a case where he or she is acting as an advocate. For example, Article 38 (3) of the LAW ON ADVOCATES states that "An advocate may not be questioned as a witness in the case in which he/she is acting as an advocate." LAW ON ADVOCATES, Article 38 (3). In addition, Article 38 (4) states that "An advocate is not responsible for those statements, which are presented in writing or orally to the court or administrative agencies by an advocate for the client's interests." LAW ON ADVOCATES, Article 38 (4).

There were no cases reported of an advocate being subjected to criminal or other forms of liability for statements made on behalf of a client. The advocates interviewed almost unanimously agree that immunity is recognized and respected. No interviewee expressed any fear of prosecution or police harassment in connection with their professional activities.

Some advocates related that an unsophisticated public sometimes identifies them with unpopular clients, e.g. criminal defendants in heinous cases involving child rape, but that they are not subject to such identification by the government or legal community. Others report that the public seems to know that the advocate is just doing his job when representing a “bad guy.” However, some advocates state that they themselves would refuse representation of persons accused of certain types of crimes.

A few respondent advocates reported harassment by government officials when they attempted to monitor elections in Adjara. One advocate for a Georgian non-governmental organization (NGO) representing the interests of internally-displaced persons (IDPs), who was monitoring these elections, was arrested and spent the night in jail.

Factor 3: Access to Clients

Lawyers have access to clients; especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

Conclusion	Correlation: Neutral
<p>The law guarantees advocates the right of access to clients and requires adequate facilities for confidential consultations. Advocates report that these guarantees are generally observed in practice, except for cases where the government has an interest or that involve political persons. Although facilities are provided, they are not always adequate. The privacy of communications between advocate and client is respected, and advocates are allowed adequate time and opportunity for preparation of a defense.</p>	

Analysis/Background:

The right to legal representation is recognized in the CONSTITUTION, which states, “The right to a defense is guaranteed.” CONSTITUTION, Article 42 (3). A suspect must be advised of his right to legal representation immediately upon his detention.” Under Article 18 (5) of the CONSTITUTION “An arrested or detained person shall be informed about his/her rights and the grounds for restriction of his/her liberty upon his/her arrest or detention.” In addition, the arrested or detained person may demand the assistance of an advocate. The right must always be satisfied. CONSTITUTION, Article 18 (5). The LAW ON ADVOCATES provides that an advocate has the right to meet and communicate personally with the detained or imprisoned client without obstacle or interference. LAW ON ADVOCATES, Article 4 (1) (c). The LAW ON ADVOCATES also guarantees the advocate the right to represent clients and to protect their interests, rights, and freedoms before all courts during the investigational and inquiry stages of the proceedings. LAW ON ADVOCATES, Article 4 (1) (a).

The right to legal representation is also guaranteed by Articles 11, 72, 73, 76 and 79 of the CODE OF CRIMINAL PROCEDURE. According to Article 11 (1) of the CODE OF CRIMINAL PROCEDURE “The court and official in charge of criminal proceedings must secure legal representation for the suspect, defendant, person on trial, inform them of their rights, and provide them with an opportunity to protect their rights and freedoms with any means allowable by law.” CODE OF CRIMINAL PROCEDURE, Article 11 (1). In addition to this general provision, Article 73 specifically addresses the right to counsel of a suspect; Article 76 ensures the defendant’s right to defense.

Prior to the adoption of amendments to the Criminal Procedure Code in 2004, advocates were not permitted to appear on behalf of clients immediately upon their detention. With the

amendments, a suspect must be advised of his right to counsel the moment he/she is detained. Articles 73, 84, and 136 restricted the amount of time an attorney could meet with his/her detained client to one hour per day. The aforementioned recent amendments have generally abolished the previously existing time impediments; however, the law still permits restrictions in specific cases. The new text of subparagraph (d) of Article 73.1, for example, reads as follows: "The suspect has the right... (d) to meet with defense counsel in private with no restriction on the number and duration of meetings. It shall be permissible to restrict this right by establishing reasonable time limits due to the interests of investigation and based on the well-founded ruling of an authority in charge of investigative proceedings." AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, Article 73 (1) (d).

No advocate reported any undue obstacle in gaining access to clients even when the clients were incarcerated except when the government had a political interest in a case or the case involved a political person. All stated that the privacy of communication was generally respected. Facilities for meeting with detained clients were provided, although, occasionally these facilities were too small to be comfortable. Moreover, often more than one meeting was going on in the same room thereby jeopardizing the confidentiality of the meeting. Criminal defendants are kept in a cage during hearings and trial, which presents obvious obstacles to an advocate's access to the client during court proceedings and hinders the advocate's ability to consult with and mount a proper defense.

There are more subtle problems faced by advocates in representing criminal defendants. For example, defendants in detention are not infrequently subject to police brutality, which they rarely admit to their advocate, even when the signs of abuse are evident. Advocates complain that this abuse, in addition to being morally repugnant and a violation of their client's civil rights, can lead to false confessions. Because the public is uneducated about its legal rights, the majority of individuals detained are easily intimidated and coerced to do as they are instructed—including retaining the advocate "suggested" by the prosecutor or police.

Another problem facing advocates representing criminal defendants is economic. At times, defendants are housed in detention facilities at some distance from where their defense counsel is located. Some of the defense counsel, especially those in remoter regions of the country, lack money to travel to visit their clients.

Factor 4: Lawyer-Client Confidentiality

The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

Conclusion	Correlation: Positive
Advocates have the legal right to confidential communications with their clients. In practice, confidentiality generally is respected.	

Analysis/Background:

The LAW ON ADVOCATES contains several provisions addressing the confidentiality of communications between a client and his/her counsel. These provisions can be divided into two categories: (1) those that prevent a third-party from invading the confidentiality of communications between the advocate and client, and (2) those that prohibit the advocate from disclosing any confidences. With regard to the first category, the LAW ON ADVOCATES provides that an advocate has the right to meet and communicate personally with the detained or imprisoned client without

obstacle or interference. LAW ON ADVOCATES, Article 4 (1) (c). Article 38 (3) of the LAW ON ADVOCATES prohibits the interrogation of an advocate with respect to his representation of a client. LAW ON ADVOCATES, Article 38 (8). With regard to the second category, the LAW ON ADVOCATES addresses the obligations of an advocate to protect the confidentiality of information imparted to him by a client. For example, Article 7 (1) requires an advocate, (a) "to keep professional secrets without regard to the passage of time, and (b) not to disclose information which has become known to him or her during his representation of the client without the client's consent." LAW ON ADVOCATES, Article 7 (1) (a-b). In addition, under Article 38 (6) "Any information obtained by an advocate from a client or person seeking legal advice shall remain confidential". LAW ON ADVOCATES, Article 38 (6). Finally, Article 38 (7) of the LAW ON ADVOCATES prohibits the "eavesdropping and reporting of conversations or correspondence between the client and advocate..." LAW ON ADVOCATES, Article 38 (7). The law references the GBA CODE OF ETHICS and states that "the Code and this law [LAW ON Advocates] will govern violation of this provision".

The CODE OF CRIMINAL PROCEDURE also protects the confidentiality of communications between the advocate and his/her client and sets forth the obligation of the state with respect to the observance of confidentiality of the attorney-client relationship. According to Article 84 (3) (b), defense counsel has the right to "meet with his/her client in private without delay and any kind of surveillance and restriction of the number and the length of such meetings on the part of the administration of a place of confinement and investigation authorities, save the cases provided for in Article 73 (1) (d)". CODE OF CRIMINAL PROCEDURE, Article 84 (3) (b).

For the most part, advocates report that the confidentiality of communications is respected. There are no reports of search and seizure of advocate's files; no demands for attorney-work product, evidence or documentations; and no reports of an advocate being interrogated or questioned with respect to his representation of a client. No advocate voiced any complaint about police or prosecutors presence during consultation with his/her client. However, some advocates voiced apprehension that their mobile telephones could be tapped. No one could cite any instance of this occurring.

Factor 5: Equality of Arms

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.

Conclusion	Correlation: Neutral
Georgian law gives advocates the right to access information relevant to the representation of their clients. Few problems with access to information were reported by respondents; however, some restriction on the timing of the provision of information by the prosecutor in criminal cases was acknowledged. This sometimes caused prejudice in the preparation of a defense and harm to the client's interests.	

Analysis/Background:

The LAW ON ADVOCATES expressly entitles an advocate to the information necessary to adequately represent his/her client. "An advocate has the right to require and receive materials, information and other documents, according to the rules established by law, which are necessary for the implementation of legal activities and protection of the client's interests". LAW ON ADVOCATES, Article 4 (1) (b). In addition, the CODE OF CRIMINAL PROCEDURE, CIVIL PROCEDURE CODE, and the GENERAL ADMINISTRATIVE CODE contain similar provisions.

The CODE OF CRIMINAL PROCEDURE currently in force ensures that lawyers have access to information relevant to the representation of their clients. Specifically, under Article 84 (3) (j-l) the advocate has the right:

- (j) to consult the statement, or testimony given by the suspect, a ruling finding him/her to be a suspect, the record of detention, to make records of necessary information that directly concerns the interests of his/her client;
- (k) to consult rulings/records of detention and arrest, the records of investigative actions in which he/she or his/her client participated, case-files confirming the necessity of arrest or detention, the ruling regarding the assignment of forensic examination and expert opinion; and
- (l) upon completion of investigation, as well as upon termination of proceedings, to consult the entire case materials, to make extracts from the files and to request copies of any procedural act. CODE OF CRIMINAL PROCEDURE, Article 84 (3) (k-l).

The main complaint expressed by criminal defense attorneys is that they are unable to obtain information from the prosecution until after the completion of the investigative phase of a case. This was felt to be a major obstacle to preparation of an effective defense, and some respondents report harm to their clients as a result (e.g. pretrial detention which the lawyer could not prevent). There were a couple of anecdotes related to difficulties in obtaining information even after the investigation was complete, but these were attributed to bureaucratic inefficiency, as much as obstinacy. In fact, most advocates reported that the entire investigative file usually is given to them.

Advocates do not report obstacles to obtaining documents or other information in civil cases. The CIVIL PROCEDURE CODE requires relevant information to be submitted by the parties to the court. CIVIL PROCEDURE CODE, Article 103 (1). The CIVIL PROCEDURE CODE also provides for the court to assist in the exchange of information. CIVIL PROCEDURE CODE, Article 103 (2). If information is produced at a later date, the parties must justify the delay, for instance, by explaining that the information was acquired after the pleading was filed. If the explanation is deemed inadequate, the judge can preclude its use. CIVIL PROCEDURE CODE, Article 157. Practitioners report that the courts enforce these procedural rules. However, lack of funds is an enormous problem. Advocates (especially in the regions) lack money even to copy court documents.

Factor 6: Right of Audience

Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

Conclusion	Correlation: Neutral
Advocates have the right to appear before judicial and administrative bodies on behalf of their clients in all types of cases, both civil and criminal. This right is generally respected. However, both advocates and other legal representatives may face unequal treatment by judicial and administrative bodies.	

Analysis/Background:

The CONSTITUTION guarantees the equal right of parties appearing before adjudicative bodies. For example, Article 85 (3) of the CONSTITUTION provides that “Legal proceedings shall be exercised on the basis of equality of the parties and the adversarial nature of the proceedings”. CONSTITUTION, Article 85 (3). In addition, Article 4 (1) (a) of the LAW ON ADVOCATES states, “An advocate has the right to represent and protect his/her client, his/her rights and freedoms at the Constitutional, Supreme, and Common Courts, in arbitration, in the agencies of inquiry and investigation, and with respect to other persons and legal entities.” LAW ON ADVOCATES, Article 4 (1) (a). Equal treatment by the courts is also mandated by the CODE OF CRIMINAL Procedure, CIVIL PROCEDURE CODE, and the GENERAL ADMINISTRATIVE CODE.

For example, according to Article 15 (1) of the CODE OF CRIMINAL PROCEDURE, “Criminal proceedings shall be conducted on the basis of equality and adversarial positions of the parties”. CODE OF CRIMINAL PROCEDURE, Article 15 (1). In addition, Article 15 (3) states that “The parties, on the basis of full-scale equality, are entitled to present evidence, participate in their examination, file motions and challenges, express their own opinion on any point of the criminal case”. CODE OF CRIMINAL PROCEDURE, Article 15 (3).

Article 4 (1) of the CODE OF CIVIL PROCEDURE states, “The parties shall enjoy equal rights and opportunities to prove their claims, decline or refute the claims, opinions or evidence of the other party. The parties themselves shall determine what facts and evidence to introduce in support of their case.” CIVIL PROCEDURE CODE, Article 4 (1). Article 5 also declares that, “A court shall administer justice in civil matters only on the principle of equality of all citizens before the law and the court”. CIVIL PROCEDURE CODE, ARTICLE 5.

Article 4 of the GENERAL ADMINISTRATIVE CODE states, “Everyone shall be equal before law [judicial] and administrative agencies. Any restriction or interference with the rights, freedoms, or interests of any party or preferential treatment or discrimination toward any party in violation of the law is prohibited. Whenever the circumstances of different cases are identical, judgments of the court will be identical, unless there is a lawful basis for rendering a different judgment.” GENERAL ADMINISTRATIVE CODE, Article 4 (1-3).

In practice, an advocate’s right to appear before all judicial or administrative bodies on behalf of a client is respected, although it is reported that in rendering a decision, judges’ are submissive to the wishes of the prosecutor and government. No difference in the treatment by judges of advocates versus non-advocate representatives was reported.

II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.

Conclusion	Correlation: Neutral
The LAW ON ADVOCATES requires that advocates have a university degree in law. At present, non-advocate representatives who do not possess such a degree can represent clients in civil and administrative cases, but that practice will end on June 1, 2006.	

Analysis/Background:

The LAW ON ADVOCATES provides that advocates must have a higher legal education. LAW ON ADVOCATES, Article 10. At present non-advocate representatives may represent clients in court on civil and administrative cases without a law degree. Jurists, who possess law degrees, may also represent clients in court. Generally, however, they limit their court appearances to occasions when they are representing their own agency or client. After June 1, 2006, only advocates who are members of the Georgian Bar Association [hereinafter “GBA”] will be able to represent clients in court.

Currently, a law faculty degree is conferred after the completion of a five-year program, which students generally enter at the age of 16 or 17. This program leads to a Masters Degree. However, the quality of the education received at even the more prestigious institutions is generally considered poor from the perspective of preparation for the practice of law (see Factor 8). Corruption in law faculties is widespread. For example respondents indicated that students bribe their way into law faculties and buy degrees. Many legal professionals, therefore, possess degrees of extremely dubious value.

There are only four State law faculties in the country: Tbilisi State University, Batumi State University, Kutaisi State University, and Tbilisi Technical University. Tbilisi State is considered the premier law faculty. A plethora of both accredited and non-accredited private institutions also offer law degrees, 64 of which are accredited. There is no information on the number of unaccredited law faculties, although it is reported that many are now closed.

Students are required to take an entrance examination for all institutions, but previously there was no standard entrance examination. Those scoring highest are awarded full tuition scholarships; lower scoring students who pass the examination pay tuition. However, pervasive corruption is reported, with students paying to have their scores raised sufficiently to guarantee their admission. The number of spaces given to those students who have paid for higher scores naturally diminishes the number of spaces available for students who are unwilling to pay a bribe and also lowers the quality of the student body. This year, as part of its reform of the educational system, the government instituted a single, nationwide entrance examination for all accredited (both state and private) institutions of higher learning. LAW ON HIGHER EDUCATION, Article 52. It is hoped that this will reduce corruption in the student admission process and improve the quality of the student body.

Article 35 (2) of the CONSTITUTION states that “The State shall ensure the compatibility of educational programs with international rules and standards”. CONSTITUTION, Article 35 (2). In that regard, the LAW ON HIGHER EDUCATION was adopted in 2005. Among other things, the LAW

ON HIGHER EDUCATION requires all faculties to reorganize their curriculum into a three or four-year Bachelor's program, a two-year Master's Program, and a minimum three-year Doctorate Program in accordance with the Bologna Declaration on Higher Education.³ There is some question as to whether the new Bachelors or Masters Degree is deemed to be equivalent to "higher legal education" as used in the LAW ON ADVOCATES. The LAW ON ADVOCATES should be amended to determine which degree is required to take the Bar Examination and become an advocate. Alternatively, this could be specified in the proposed LAW ON HIGHER LEGAL EDUCATION discussed in Factor 8.

The LAW ON HIGHER EDUCATION also covers accreditation standards. The accreditation procedure, in general, is covered by *Chapter XI "Institutional and Programme Accreditation of Higher Education Institutions"* of the LAW ON HIGHER EDUCATION, which among other things establishes a legal entity of public law the "State Accreditation Service" to independently carry out accreditation activities.⁴ *Chapter XII "Accreditation of Regulated Education Programmes"* states that there will be future additional accreditation standards and procedures for law programs as defined by the State Accreditation Service and approved by the Ministry of Education and Science [hereinafter "MoES"].

According to the MoES, there will be separate evaluation groups for all disciplines containing experts in the evaluated field, and for the professional fields (law and medicine) there will be an "independent agency/group," which will include not only academics, but practitioners in the related profession. The LAW ON HIGHER EDUCATION mentions a "legally established professional organization, as part of this evaluation group⁵. For law, this would be the GBA. The GBA CHARTER does not contain any provision for GBA members to play a role in this educational reform; however, it does contain a statement that one of the goals of the GBA is to "raise advocates' qualification and to support the development of their professional skills." GBA CHARTER, Article 3 (1) (e).

Factor 8: Preparation to Practice Law

Lawyers posses adequate knowledge, skills, and training to practice law upon completion of legal education.

Conclusion	Correlation: Negative
Law faculties generally provide students with a theoretical knowledge of the law, but fail to give sufficient practical and analytical skills training for them to adequately practice law upon graduation.	

Analysis/Background:

Article 35 (2) of the CONSTITUTION states, "The State shall ensure the compatibility of educational programs with international rules and standards". CONSTITUTION, Article 35 (2). The new LAW ON HIGHER EDUCATION reflects the government's efforts to live up to this constitutional provision.

³ The Bologna process is the process of creation of the European Higher Education Area (EHEA). The process started on June 19, 1999 and should be completed by 2010. The main objectives of the Bologna declaration are to increase the mobility and employability of European higher education graduates thus ensuring competitiveness of European higher education on the world scale. Issuing of the Joint European Diploma Supplement to all graduates and usage of a credit system (ECTS or compatible) are seen as the main tools for transparency.

⁴ LAW ON HIGHER EDUCATION, Articles 63 (2-3).

⁵ LAW ON HIGHER EDUCATION, Article 77.

Although legal education reform is proceeding in accordance with this constitutional mandate, it does not effect the current generation of legal professionals.

It is overwhelmingly reported that university graduates with a law degree are ill prepared to practice law. According to respondents the problem lies in part with the fact that the focus of law faculty programs is theory. In essence, the majority of instruction is given through lectures with some seminars, but there is little interactive teaching. Rote memory of lectures is emphasized over problem solving. Therefore, little emphasis is given to developing analytical skills or practical advocacy skills.

Another weakness in the current legal education is the dearth of good student internships. Students are required to complete a one-year internship/apprenticeship that follows four years of law faculty and is designed to provide students with practical skills training and exposure to the actual work of advocates and other legal professionals. The state universities provide students with a rotating internship that comprises a few months each at various government agencies. Students are also free to arrange for their own internship. Respondents report, however, that the internships provided by the state law faculties generally are more of a sham than real in that the agencies make little pretence of actually providing the students with work experience. Moreover, there is a dearth of opportunity for students to intern in the private sector. The bottom line is that there are simply not enough worthwhile internship opportunities available.

While the LAW ON HIGHER EDUCATION does not specifically address legal education, it is hoped that the law's provisions for institutional and curricular changes will positively affect the practical and analytical skills of law faculty graduates in the near future. However, recognizing that there are special issues related to legal education, the Parliament is considering a LAW ON HIGHER LEGAL EDUCATION. The LAW ON HIGHER LEGAL EDUCATION is expected to define accreditation standards for law faculties, provide guidelines on curriculum development, and address other important issues. Hopefully, the proposed LAW ON HIGHER LEGAL EDUCATION will mandate a curriculum that will provide law school graduates with the knowledge and skills they need to effectively practice law.

Another major concern facing the academic institutions in Georgia is the lack of legal resources and materials needed to adequately teach and train students. There are only a couple of adequate law libraries — one at the Supreme Court and the other at the Georgian Young Lawyers Association (GYLA)—and these are both in Tbilisi. No library in the country meets Western standards. There is a lack of electronic legal resources and the means (computers) to access what meager electronic resources are available. This problem is especially acute in the regions.

For a more detailed discussion of legal education in Georgia, see ABA/CEELI *Assessment of Legal Education in Georgia*, August 2005.

Factor 9: Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

Conclusion	Correlation: Neutral
As of June 1, 2006, all advocates will be required to have passed the Bar Examination and have one year's experience as a precondition for admission to the Georgian Bar Association [hereinafter "GBA"]. However, the law does not specify that the experience be a supervised apprenticeship.	

Analysis/Background:

Article 10 (1) (a-d) of the LAW ON ADVOCATES sets forth the requirements to be an advocate and thus eligible for admittance into the GBA, which is mandatory for an advocate to practice law. These requirements are:

- a) graduation from a law faculty;
- b) passage of the advocates test (bar examination);
- c) giving the oath of an advocate (see LAW ON ADVOCATES, Article 21); and
- d) one year's working experience. LAW ON ADVOCATES, Article 10.

As the LAW ON ADVOCATES predated institution of the Bar Examination, advocates were given until June 1, 2006 to pass the Bar Examination. LAW ON ADVOCATES, Article 40.4.

The LAW ON ADVOCATES also specifies that there be three different bar examinations that the examinee can choose (general, civil law specialization and criminal law specialization) and lists the subjects each exam includes. LAW ON ADVOCATES, Article 11 (3).

The General Exam is conducted in:

- Constitutional Law
- International laws on human rights
- The Administrative Code [GENERAL ADMINISTRATIVE CODE] and Administrative Procedural Code
- The CRIMINAL CODE and CODE OF CRIMINAL PROCEDURE
- CIVIL CODE and CODE OF CIVIL PROCEDURE. LAW ON ADVOCATES, Article 11 (5) (a-h).

The requirements are the same for the Civil Law Specialization, except the CRIMINAL CODE and CODE OF CRIMINAL PROCEDURE is excluded. LAW ON ADVOCATES, Article 11 (6) (a-f). For the Criminal Law Specialization, the CRIMINAL CODE and CODE OF CRIMINAL PROCEDURE are excluded. LAW ON ADVOCATES, Article 11 (7) (a-f).

Article 26 (4) (b) of the LAW ON ADVOCATES appoints the Executive Council to "determine the date of testing of advocates, to organize the preparation and holding of the test, and to organize the testing throughout Georgia." LAW ON ADVOCATES, Article 26 (4) (b). These matters are subject to approval by the GBA General Assembly. LAW ON ADVOCATES, Articles 24 (2) (c). According to the LAW ON ADVOCATES, prior to the formation of the GBA, the High Council of Justice [hereinafter "HCOJ"], is responsible for administering the Bar Examination. The HCOJ is to form a

commission to administer the Bar Examination. Not less than half of the members of the Advocates Qualification Commission are to come from representatives of different unions of advocates and lawyers of Georgia. LAW ON ADVOCATES, Article 40 (1-4).

As of the time of this LPRI assessment two bar examinations have been given: the first in November of 2003 and the second in September of 2004. Both were administered by the HCOJ with assistance and funding by ABA/CEELI. This was in accordance with Article 11 (2) of the LAW ON ADVOCATES, which mandates that the Bar Examination be conducted twice a year; however, with the current uncertainty surrounding the GBA, no further examinations have been scheduled. This is causing a hardship on those who are waiting to take the Bar Examination and whose status as advocates after June 1, 2006 is likely to be affected.

The bar examinations already given are generally reported to have been fair and transparent, but not rigorous. A few respondents related that many of the questions involved arcane information not useful to the practice of law. The two bar examinations have consisted of 100 multiple-choice and true and false questions randomly drawn from a pool of 5129 questions, which were distributed in advance as a study guide. There were no essay questions, since it was felt that essays would be subject to allegations of lack of objectivity on the part of those grading them – a problem which was avoided by questions the answers to which could simply be matched to an answer sheet.

Even with extensive precautions against cheating, cheating was reported to have occurred on the bar examinations. Whether cheating occurred is hard to determine, but the passage rates from the two exams are not out of line with expected results. For example, on the first examination, 772 out of 1079 passed -- for a pass rate of 71 percent. On the second examination, 1267 passed out of 2059 -- for a passage rate of 62%.

In addition to the Bar Examination, a potential advocate can take the Judicial Qualification Examination administered by the HCOJ. The ABA/CEELI provided assistance to the HCOJ in connection with the Judicial Qualification Examination held in June 2005. That exam was reported to be rigorous and fair. The exam consisted of two parts—first a multiple choice section with 100 questions randomly chosen from a pool of over 1000 questions (they were not distributed in advance and no study guide was provided) and the second part consisted of six essay questions. The passage rate on the June 2005 Judicial Qualification Examination was approximately 13%.

Factor 10: Licensing Body

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

Conclusion	Correlation: Neutral
As of June 1, 2006, admittance to the Georgian Bar Association [hereinafter “GBA”] will be mandatory for the practice of law. The Executive Council of the GBA is charged with regulating admission, based upon the requirements set forth in the LAW OF ADVOCATES. Its decisions are subject to review by the courts.	

Analysis/Background:

The LAW ON ADVOCATES provides that as of June 1, 2006 admittance to the profession of advocate requires passage of the Georgian Bar Examination and membership in the GBA.

Individuals are eligible for membership once they have graduated from a law faculty, passed the Bar Examination, have one year's work experience, have sworn an oath or affirmation, and been approved by the GBA Executive Council. LAW ON ADVOCATES, Article 10 (1) (a-d). Denial of membership by the Executive Council can be appealed to the court. LAW ON ADVOCATES, Article 17 (2) (d) (5). At present, because there is no functioning GBA, there is no licensing mechanism for advocates, and in the lacuna left by the uncertainty surrounding the status of the GBA, since a representative may represent non-criminal clients in court, there appear to be no formal requirements before one can practice law.

Article 21 of the LAW ON ADVOCATES specifies that a person apply to the Executive Council of the GBA for membership in the GBA. Specifically, under Article 21.2 (a-c) an applicant must present basic personal data and a certificate showing passage of the Bar Examination. LAW ON ADVOCATES, Article 21 (2) (a-c). The bases for denying membership are outlined in Article 21 (3) (a-c). These include (a) failure to "meet the requirements of Article 10 subparagraphs (a) and (b) and paragraph 2 of the same article"; (b) the passage of seven or more years since the applicant passed the Bar Examination; and (c) if the applicant's membership is terminated on the basis of Article 21, subparagraphs b, f, and 3 years have not passed after termination". LAW ON ADVOCATES, Article 21. In addition to the criteria stated above, Article 10 (2) provides that membership be denied to "persons convicted for a deliberate commission of a crime when the conviction is not annulled in accordance with the rule established by Georgian legislation". LAW ON ADVOCATES, Article 10 (2). Under Article 21 an advocate's membership can also be terminated under certain conditions. These include:

- (a) personal application;
- (b) a decision of the Ethics Commission of the GBA or/and court decision;
- (c) incapacity of the advocate;
- (d) conviction for the commission of a deliberate crime;
- (e) court ordered medical treatment;
- (f) failure to meet the requirements in Article 10;
- (g) failure to pay the mandatory GBA fee; and
- (h) death. LAW ON ADVOCATES, Article 21 (a-h).

The LAW ON ADVOCATES provides that the GBA Executive Council be the executive body of the GBA and that it consist of nine members -- 8 of whom are to be democratically elected to a term of three years by the general assembly of the GBA (The ninth member is the president of the GBA). LAW ON ADVOCATES, Article 26 (2).

Factor 11: Non-discriminatory Admission

Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

Conclusion	Correlation: Neutral
The CONSTITUTION and the LAW OF ADVOCATES guarantee equality of opportunity. However, the requirements that the Bar Examination be given in the Georgian language and that court proceedings be conducted in Georgian may be an obstacle to members of ethnic minorities practicing law.	

Analysis/Background:

Article 14 of the CONSTITUTION guarantees that “Everyone is free by birth and is equal before the law regardless of race, color, language, sex, religion, political or other opinions, national, ethnic and social membership, origin, property and title, or place of residence.” CONSTITUTION, Article 14. However, the CONSTITUTION also mandates that “the state language of Georgia shall be Georgian, and in Abkhazia- also Abkhazian (change added by Constitutional Law of Georgia of 10 October 2002).” CONSTITUTION, Article 8.

The LAW ON ADVOCATES has complementary language regarding equality. For example, under Article 10 (1) (a-d) “An advocate can be any physical person, if he/she:

- (a) Has a high legal education [law degree];
- (b) Has passed the advocates test in accordance with the rules established by this law;
- (c) Has given the oath of an advocate (written the affirmation) in accordance with this law; and
- (d) Has at least one year of working experience as an advocate or intern of an advocate.”
LAW ON ADVOCATES, Article 10 (1) (a-d).

However, Article 10 (2) states that “An advocate may not be a person convicted for a deliberate commission of a crime when the conviction is not annulled in accordance with the rule established by the Georgian legislature.” LAW ON ADVOCATES, Article 10 (2). In addition, under Article 11 (9) “The test [advocate test] is held in the State language [Georgian]. LAW ON ADVOCATES, Article 11 (9). This provision clearly could make it difficult for non-Georgian speakers to enter the profession and serve as a *de facto* discriminatory practice. Moreover, the LAW ON ADVOCATES restricts admission to citizens of Georgia. LAW ON ADVOCATES, Article 10 (1).

No one reported any instance of discrimination in access to the profession. In fact, there is an affirmative action policy in place with regard to admission of orphans of internally displaced persons (IDPs) from Abkhazia to the state law faculties, as well as to other faculties of higher education. As a general rule, discrimination cannot be viewed as a major issue with regard to the legal profession.

Although recently the President made proclamations concerning the diversity of the Georgian population, the need for tolerance toward other ethnic groups, and the need to encourage all group’s integration into the government exists. For example, Georgians deny discrimination toward minorities, such as Azeris and Armenians, although they express some skepticism at the thought of an Azeri advocate. One respondent stated that “Azeris generally prefer to become

farmers and do not have an intellectual tradition, as do Armenians”. One judge interviewed who sits in an area of the country with an Azeri majority said that the Azeris attend universities outside of Georgia and tend to stay in the country where the university is located.

One Armenian lawyer in Tbilisi confirmed the lack of discrimination, but stated that language can be a barrier to Armenians and Azeris practicing law, since in Georgia members of these ethnic groups traditionally have been educated in the Russian language, while the state language is now Georgian. Azeri and Armenian advocates, who practice in areas of Georgia where the majority of the population belongs to one of these ethnic groups, relate that they are not proficient in Georgian and will not be able to pass the Bar Examination, as it is only given in Georgian. Thus, after June 1 2006, when the provisions of the LAW ON ADVOCATES on licensing take effect, these legal professionals state that they will no longer be able to practice law in Georgia.

In one region of Georgia close to the Armenian border where Georgians are the minority, there were hints that a Georgian advocate might face discrimination, but no actual instance of discrimination reported.

Discrimination toward the physically challenged also was denied; however, law faculties, courthouse facilities, as well general conditions in the country make it apparent that mobility and communication would be almost impossible obstacles to overcome for a physically-challenged individual.

While there are no official numbers, it is apparent that women are well represented in the law faculties and legal profession. For example, women are often seen in positions of importance, such as heads of law offices or deputy prosecutors. In fact, one of the leading criminal law advocates in the country is a young woman. When asked about the existence of discrimination toward women, both women and men respond with amusement that the question is even being posed.

III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

Conclusion	Correlation: Positive
Advocates have the constitutional right to practice independently or in association with others. In practice, the only limitation on this right is financial.	

Analysis/Background:

The CONSTITUTION states, “Everyone shall have the right to form and to join public associations, including trade unions.” CONSTITUTION, Article 26 (1). However, under Article 26 (3) such activities can be restricted if “The formation and activity of such public and political associations aiming at overthrowing or forcibly changing the constitutional structure of Georgia, infringing upon the independence and territorial integrity of the country or [promoting] war or violence, provoking national, local, religious or social animosity, shall be impermissible.” CONSTITUTION, Article 26 (3). In terms of law practices, Article 18 of the LAW ON ADVOCATES is dedicated to the organization of the law practice. Specifically Article 18 (1) provides that, “After receipt of a certificate, an

advocate has the right to create independently or together with other advocates a legal bureau (office, firm, etc.) in the form of a cooperation or entrepreneurial legal body, where the responsibility of not less than one partner is not limited.” LAW ON ADVOCATES, Article 18 (1). During the transitional period, before June 1, 2006, registration of all legal bureaus should become in compliance with the requirements set in Article 18 of the LAW ON ADVOCATES.

In practice, the majority of advocates in the regions work for legal consultancies, which are a holdover from the Soviet structure. The total number of these consultancies is unknown. They usually are managed by a senior advocate. Clients contract with an individual advocate to represent them. The advocate is required, however, to give a certain percentage of the contract price to the consultancy, usually five percent, which uses it to pay common expenses, such as overhead.

In Tbilisi, most advocates are in solo practice or small law firms. Law firms with a few advocates each seem to be the norm, although there are a few larger ones of up to 20 to 25 advocates, advocates assistants, and interns of an advocate. For regulations on advocate assistants and interns see LAW ON ADVOCATES Articles 16 and 17 (statistics on the number of law firms in Tbilisi or the rest of Georgia are unavailable). Large law firms, such as are seen in the United States and Western Europe are unknown in Georgia. The main reason for this is financial, as advocates lack the financial resources to set up solo practices or form law firms. Advocates also report that they like the opportunity to consult with other advocates that practicing in a group affords and that being affiliated with a legal consultancy helps them attract clients.

Factor 13: Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

Conclusion	Correlation: Negative
Generally, libraries in the cities possess the basic resources necessary to provide adequate legal services. This is not the case in the rural areas, where advocates complain of the meager resources available. For all but a few successful advocates, mainly in Tbilisi, remuneration for legal services is critically low.	

Analysis/Background:

a. Access to Legal Information and Resources

While advocates in Tbilisi and the three other cities (Batumi, Gori, and Kutaisi) report that they have access to legal information and possess the basic resources necessary to provide competent legal services, for those in the other towns and rural areas, access to laws and judicial decisions is a major obstacle. Advocates in the poorest areas report that they are often unaware of amendments to statutes, especially given that changes in the laws are so numerous and rapid.

There are law libraries available, but these are primarily in Tbilisi, and do not meet Western standards. The Supreme Court has an adequate library, as does the Georgian Young Lawyer's Association [hereinafter "GYLA"] Tbilisi office. The GYLA offices in the regions have small libraries, and they make them available to practitioners. Some judges outside of Tbilisi reported that they often lend their copies of the codes and other laws to advocates. The codes are published by a variety of publishers who issue only legal publications. They are carried by several stores in Tbilisi where only legal literature is sold. The price for a good quality publication

is approximately 15 GEL (approximately 9 USD). There is a newspaper, *Legislative Information* that carries amendments to laws and that some advocates report receiving. There is also a computerized database named *Codex* that provides online access to the CODE OF CRIMINAL PROCEDURE, CIVIL CODE, CIVIL PROCEDURE CODE, and GENERAL ADMINISTRATIVE CODE and other laws and regulations. The *Codex* allows users to keep up with amendments and changes to the laws. However, the service costs 50 GEL initially (approximately 30 USD) and 20 GEL (approximately 12 USD) for updates -- a prohibitive amount for most advocates --especially for those who practice in the poorer regions of the country. Access to the *Codex* is not available through Internet cafés, and in any case, these cafés do not exist in most of the regions of the country. Additional obstacles to computer access are a lack of electricity in the regions, and a lack of research skills on the part of the practitioner.

ABA/CEELI published Constitutional Court decisions from 1996-2002 and decisions of the Tbilisi District Court in 2002. In the past, ABA/CEELI also published leading Supreme Court human rights cases. Some other Supreme Court cases have been published by international NGOs in the past on a sporadic basis. The Judges of Georgia, with support from ABA/CEELI, maintain a database of Supreme Court decisions. Currently, it offers decisions from 2001-2002. It is being updated and will soon include the years 2003-05. The cost of a subscription to this database has not yet been determined.

While, as stated above, legal resources are few, most advocates do not express the need for more extensive ones and seem satisfied if they have access to the following laws: the CODE OF CRIMINAL PROCEDURE, CIVIL CODE, CIVIL PROCEDURE CODE, GENERAL ADMINISTRATIVE CODE, and legal commentaries or treatises. It was reported that the GYLA's offices in the regions provided the legal resources needed by advocates, yet these libraries are very small, consisting mainly of the hardcopies of various codes. In addition, these codes often do not reflect recent amendments. Furthermore, legal treatises were not in evidence. The libraries of most private practitioners are very meager. Yet again, when questioned as to their adequacy, no dissatisfaction was expressed. This may reflect a difference in the style of practices between the United States and Georgia and the difference between a civil code and common law-based legal system. In Georgia, precedent from judicial decisions is not cited, thus obviating the need for citation to decisions and the use of publications of these opinions. It may also reflect the generally poor legal education that most advocates receive and the lack of training in research methods.

Other resources necessary to provide professional legal services are in short supply. Space appears to be limited, and advocates share space with several desks in one room. It is not uncommon for advocates to share desks. In general, the offices are shabby and not well appointed. There are no secretaries, although occasionally there is a clerical assistant who performs secretarial duties. There are no computers and only a few ancient looking typewriters on which pleadings were prepared. There is usually no office stationery, although a few of the more successful law firms in Tbilisi have offices with more amenities, such as conference rooms, business cards, computers, and stationery. However, these are the exception rather than the rule.

b. Remuneration

Remuneration for legal services is difficult to determine. The LAW ON ADVOCATES provides the right to contract for legal services. For example, under Article 4 (1) (a) "An advocate has the right: To represent and protect a client, his/her rights and freedoms at the Constitutional, Supreme, and Common Courts, in arbitration, in the agencies of inquiry and investigation, toward other physical and legal bodies". LAW ON ADVOCATES, Article 4 (1) (a). In addition, Article 19 states that "(1) An advocate practices the law based on an agreement; (2) An advocate is obliged to present, at the agencies of inquiry and preliminary investigation or during the case the document issued by the client according to the established rule- power of attorney or order and

the advocate's certificate". LAW ON ADVOCATES, Article 19 (1-2). Advocates all report being able to freely negotiate contracts with their clients.

Fees vary dependant on years of experience, reputation in the legal community, specialization of the practitioner, and complexity or difficulty of the matter. Most contracts set a flat fee for the service to be rendered. No one acknowledged contracting for a fee on a contingency basis, but some reported negotiating for a bonus if a successful outcome was achieved. It is important to note that working drafts of the CODE OF ETHICS to be adopted by the Georgian Bar Association [hereinafter "GBA"] are modeled on the codes of European nations, which prohibit contingency fees. In addition, some respondents reported renegotiating a fee if the matter turned out to be more difficult or prolonged than originally expected. A few individual advocates charge hourly fees, but this is not the norm.

It is also difficult to determine what percentage of advocates can actually make an adequate living practicing law. Anecdotal evidence suggests that a very small percentage of advocates in Georgia actually prosper, and they are located in the cities. There is another small percentage that is able to make a satisfactory living. The remainder scrape by or are not able to financially survive on the income they receive solely from providing legal services.

There are 2059 individuals who have passed the two bar examinations given thus far. Of these, 1204 qualified for and sought admittance to the GBA. Of this number, respondents estimated that only approximately half will be able to make a living as advocates.

Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

Conclusion	Correlation: Negative
The LAW ON ADVOCATES provides for an "advocacy training center"; however at present there are no continuing legal education [hereinafter "CLE"] requirements and CLE opportunities available through donor organizations are sporadic and insufficient.	

Analysis/Background:

Under the law, professional training of advocates is the responsibility of the Georgian Bar Association [hereinafter "GBA"]. For example, Article 23 (3) of the LAW ON ADVOCATES provides for an advocates training center. "The advocate's training center is created by the Georgian Bar Association, which implements the professional training of advocates. The operation of the advocate's training center will be determined by provisions adopted by the association." LAW ON ADVOCATES, Article 23 (3). However, in view of the current uncertainty surrounding the formation of the GBA, there has been no activity toward creation of the advocates training center and, indeed, even when the GBA is established, it is uncertain when it will be created, since the LAW ON ADVOCATES does not impose any deadline. Moreover, there is no law requiring advocates to attend CLE programs. For example, neither the GBA CHARTER adopted by the GBA nor the DRAFT CODE OF ETHICS has any such requirement.

Some CLE programs are available on a sporadic basis through international donors, such as the ABA/CEELI, the CoE, and the OSCE, which either conduct courses themselves or fund local NGOs or associations, such as the Georgian Young Lawyers Association (GYLA), to conduct them. Local associations are unable to sponsor CLE programs without donor support. While donors are cognizant of the need for CLE in the regions, this need is unmet. Of the few CLE

programs that exist, the majority take place in Tbilisi, which makes it too inconvenient and too expensive for legal professionals in the regions to attend. Respondents repeatedly expressed their desire for CLE opportunities – especially those who reside outside Tbilisi. – and bemoan the lack of CLE opportunities.

Factor 15: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.

Conclusion	Correlation: Neutral
The citizens of Georgia are predominately ethnic Georgian and of the Orthodox faith. However, the country does contain significant minority ethnic populations. Women are well represented in the legal profession although minorities are not.	

Analysis/Background:

Under Article 14 of the CONSTITUTION “Everyone is free by birth and is equal before the law regardless of race, color, language, sex, religion, political and other opinions, national origin, ethnic and social belonging, origin, property and title, and place of residence”. CONSTITUTION, Article 14. However, the CONSTITUTION also mandates that “the state language of Georgia shall be Georgian, and in Abkhazia- also Abkhazian (change added by Constitutional Law of Georgia of 10 October 2002).” CONSTITUTION, Article 8. This requirement affects non-Georgian minorities’ ability to enter the legal profession (See factor 11).

In terms of ethnic minorities and women in the legal profession Article 10 (1) (a-d) of the LAW ON ADVOCATES states that “An advocate can be any citizen of Georgia, if he/she:

- a) Has a high legal education [Law Degree];
- b) Has passed the advocates test in accordance with the rules established by this law;
- c) Has given the oath of advocate (wrote the affirmation) in accordance with this law; and
- d) Has at least one year of working experience as an advocate or intern of an advocate.”
LAW ON ADVOCATES, Article 10 (1) (a-d).

Although the LAW ON ADVOCATES does not mention ethnicity or gender specifically, the fact that it says that ANY citizen of Georgia can be an advocate as long as they meet the requirements of the law implies that discrimination based on ethnicity or gender is not allowed. In fact, the evidence suggests that there is no overt discrimination based on ethnicity or gender in the legal profession. According to the most recent census figures, 70.1 percent of the population is ethnic Georgian and of the Orthodox faith. Armenians and Russians each comprise 7 percent of the population, respectively, and Azeris make up 6 percent. As stated in Factor 11, no one reports any discrimination in the professional realm; however, these minorities are not represented in the legal profession in proportion to their numbers in the general population. One reason for this disparity is the fact that under Article 11 (9) of the LAW ON ADVOCATES “The test [advocate test] is held in the State language [Georgian]” LAW ON ADVOCATES, Article 11 (9). Clearly this could make it difficult for non-Georgian speakers to enter the profession and serve as a *de facto* discriminatory practice.

With regard to Armenians, their relatively few numbers in the ranks of advocates can also, at least partially, be explained as the result of a language barrier. Armenians traditionally have attended Russian language schools and may not be fluent in Georgian. As court proceedings are by law conducted in the state language (Georgian), this may put Armenians at a disadvantage. Azeris also generally speak Russian or Azeri rather than Georgian and are perceived as generally preferring types of work (generally agricultural) other than law. For them, also, the language barrier is a significant obstacle to practicing law. There is at least one advocate who is an internally displaced person.

As of June 2005, women constituted slightly more than 50 percent of the total population.⁶ The percentage of women in the legal profession is unknown, but participation appears extremely high. Female advocates did not report difficulties in admission to law faculty or to the legal profession. In fact, one of the most highly regarded criminal law advocates in the country is a young woman. Women are heads of law firms, prosecutors and judges. It does not appear as if clients prefer male advocates or that women have more difficulty than men in attracting clients. For the most part, respondents report a relatively equal balance of male and female law students. However, respondents state that there are few members of minority groups in the law faculties.

Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

Conclusion	Correlation: Negative
There is no code of professional conduct for advocates. The LAW ON ADVOCATES mandates the establishment of a code of professional conduct and the means of enforcement by the Georgian Bar Association [hereinafter "GBA"]. The law also contains a number of ethical standards and disciplines to be imposed; however, at present they are not observed, are not enforced, and have no deterrent effect.	

Analysis/Background:

The LAW ON ADVOCATES is replete with references to professional ethics and their importance to the profession. In fact, the LAW ON ADVOCATES mandates that a code of ethics be formulated within three months of the inaugural session of the GBA. LAW ON ADVOCATES, Article 44. In addition, Article 3 of the LAW ON ADVOCATES, which sets forth the principles of legal practice, includes "Protection of norms of professional ethics by an advocate". LAW ON ADVOCATES, ARTICLE 3 (h). In addition, Article 5 (1) states that one of the duties of an advocate is "To implement his/her professional functions honestly, to protect the norms of professional ethics, to prohibit infringement of the rights of the court and other legal participants, to protect professional confidences, to implement duties established by procedural legislation and to inform a client immediately in the event of a conflict of interest". LAW ON ADVOCATES, Article 5 (1). Furthermore, Article 6 (1) states that, "An advocate has the right to use any means, which are not prohibited by legislation or norms of professional ethics, to protect a client's interests." LAW ON ADVOCATES, Article 6 (1). Article 6 (2) states that an advocate is obliged to provide a client with information about the financial obligations of the client related to his/her lawsuit. LAW ON ADVOCATES, Article 6 (2). Other provisions set forth specific ethical obligations or prohibitions. These generally include

⁶ The World Fact Book, CIA, June 2, 2005, www.cia.gov.

the types of ethical strictures familiar to American and Western European lawyers, such as a prohibition on representing two opposing parties simultaneously (Article 8) and an admonition that information learned from a client must be kept confidential (Article 7). Article 28 contains a detailed outline of the composition, functions, and certain procedures of the GBA Ethics Commission.

When questioned about ethical codes or codes of conduct, virtually every respondent, especially judges, indicated their strong desire to have a code of professional conduct/code of ethics for advocates. This desire reflects Georgians' recognition that a code of ethics is one of the indicators looked at by the European Union in determining whether a country is "ready" for membership, a realization that a code of ethics is necessary to professionalize the practice and to raise public opinion of lawyers, and a belief that a code of ethics is a necessary component in building democratic institutions and a necessity for all professionals – not just lawyers. Many perceive the current lack of professional ethical standards as a serious problem and say that corruption among lawyers (and judges) is prevalent. The corruption takes the form of bribes. Another type of unethical conduct cited by judges is the practice by some advocates and other practitioners to prolong cases that could be settled in order to collect additional fees. Generally, advocates express hope that a code of ethics will be developed and enforced, though there is some skepticism that they will be able to successfully police their own profession.

Although the situation with the GBA is unclear, as discussed above, the GBA President and a group of advocates, with support from the CoE and the ABA/CEELI, have forged ahead in developing a DRAFT CODE OF ETHICS within the three-month time limit imposed by the LAW ON ADVOCATES. This DRAFT CODE OF ETHICS, which mirrors the requirements of the LAW ON ADVOCATES, also contains additional ethical standards and detailed procedural rules for the initiation, evaluation, and disposition of complaints against advocates.

Factor 17: Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

Conclusion	Correlation: Negative
There is no functioning disciplinary mechanism or enforced sanctioning of advocates for violating standards and rules of the profession.	

Analysis/Background:

The only disciplinary structure available for violations of the standards and rules of the legal profession is contained in the LAW ON ADVOCATES. For example, Article 5 (1) of the LAW ON ADVOCATES states that one of the duties of an advocate is that "An advocate is obliged to implement his/her professional functions honestly, to protect exactly the norms of professional ethics, to prohibit infringement of the rights of the court and other legal participants, to protect professional confidences, to implement duties established by procedural legislation and to inform a client immediately in the event of a conflict of interest". LAW ON ADVOCATES, Article 5 (1).

In terms of disciplinary proceedings, Articles 32 through 35 of the LAW ON ADVOCATES are applicable. For example, Article 32 (1) states that "An advocate is imposed disciplinary responsibility for: (a) the violation of requirements determined in Articles 5 and 9 of this law; (b) violation of norms of professional ethics." However Article 32 (2) states that "An advocate should not be disciplined if 3 years have passed after the commission of the disciplinary violation." LAW

ON ADVOCATES, Article 32 (2). Article 33 states that the Ethics Commission of the Georgian Bar Association [hereinafter “GBA”] is responsible for commencing the disciplinary proceedings. The types of disciplinary measures that can be levied are enumerated in Article 34 (1) and (2). These include:

Types of disciplinary measures are:

- Warning;
- Deprivation of the right to practice law from 6 months to 3 years;
- Removal from the Unified List of Advocates of the Georgian Bar Association;

Measures of disciplinary influence are:

- Private letter of reprimand;
- Deprivation of the right to be a member of the Executive Council, Ethics Commission, and Audit Commission of the GBA, Adjara and Abkhazia.” LAW ON ADVOCATES, Article 34 (1) and (2).

Pursuant to the LAW ON ADVOCATES, the GBA is to establish an Ethics Commission that will determine if a violation of the LAW ON ADVOCATES or CODE OF ETHICS has occurred and if so, administer the appropriate discipline. With the current situation concerning the formation of the GBA, there is presently no functioning disciplinary system and no enforcement mechanism. No advocate is presently being sanctioned for a violation of a provision of the LAW ON ADVOCATES or any other violation of professional conduct.

Respondents report that there is presently no attempt to enforce the above provisions. Judges and advocates alike generally profess to be waiting the enactment of the CODE OF ETHICS before making any attempt to charge an advocate with an ethical or conduct transgression. Judges relate that they refrain from sanctioning advocates because the judges do not want to appear biased in favor of one party or the other. One or two judges reported attempting to discipline unruly advocates by verbal admonition with varying degrees of success. However, uncivil behavior among advocates is not considered to be widespread, as most advocates and judges are from the same communities and are acquainted with each other. Advocates state that at present there is no avenue by which they can bring a complaint against another advocate or civil practitioner.

Although the Civil Procedure Code and the CODE OF Criminal Procedure authorize judges to regulate misbehavior in their courtrooms and punish such misbehavior, this is not done in practice. There are currently no contempt of court provisions in any of Georgia’s codes. However, it is reported that the Georgian Parliament is planning to pass contempt laws in the next legislative session.

IV. Legal Services

Factor 18: Availability of Legal Services

A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Conclusion	Correlation: Negative
It is perceived that generally there are a sufficient number of lawyers to satisfy the population's need; however, widespread poverty and the paucity of competent advocates in the regions keep the demand for legal services low.	

Analysis/Background:

The population of Georgia, according to the latest census, is 4,667,401, of which 1,440,000 are concentrated in the Tbilisi metropolitan area.⁷ There are no statistics available as to the number of advocates or non-advocate representatives. As of February 2005, 1204 had qualified under the LAW OF ADVOCATES to become members of the Georgian Bar Association [hereinafter "GBA"], and approximately 900 had taken the oath at the inaugural session. At present, these 900 should be eligible to practice in 2006. When a functioning GBA is established and additional bar examinations administered, this number should grow. However, the admission of additional advocates who will be eligible to practice in 2006 currently is blocked, since there is no functioning GBA, and it is unclear whether the High Council of Justice [hereinafter "HCOJ"] is legally authorized to administer another bar examination.

The general perception of the legal community is that, with some exceptions in the remoter regions, there is not a shortage of advocates. Yet, apparently, there is a severe shortage of qualified advocates, if by this is meant competent and not merely eligible to practice. Judges interviewed generally estimate that fewer than half of the number of advocates in any given regional area are competent. Advocates do not complain of being overly busy; indeed, most frequently, the opposite is true.

As part of its overall reforms of the judicial system, in June, 2005, the Georgian Parliament passed legislation to consolidate the Common Courts in Tbilisi. Where there were five courts, there is now one Common Court. Presidential Decree *Creation of Regional (City) Courts, Territorial Jurisdictions and Number of Judges* (issued April 12, 2005). Additional legislation is planned that will reduce the total number of Common Courts from 74 to 15. One effect of this measure will be to worsen the problem of accessibility to legal services in some regions of the country. All judges and advocates interviewed agreed that this will create a tremendous hardship on advocates and clients alike, as it will increase the financial burden on clients who must pay the expense of travel to court, not only for themselves, but also for their advocate and experts.

⁷ The World Fact Book, CIA, (June 2, 2005). Available at <http://www.cia.gov/>; Infoplease Almanac, (June 16, 2005). Available at www.infoplease.com

Factor 19: Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

Conclusion	Correlation: Negative
<p>The present low rate of government remuneration for court-appointed representation [hereinafter “<i>ex officio</i> representation”] of indigent defendants is a deterrent to advocates accepting such employment and, therefore, results in many criminal defendants appearing <i>pro se</i>. Legal aid in civil cases is nonexistent. As a result, in many civil matters, parties appear <i>pro se</i> as well. Therefore, numerous individuals, especially the indigent and incarcerated, are deprived of their right to legal services.</p>	

Analysis/Background:

The CONSTITUTION guarantees criminal defendants the right to legal representation. For example, under Article 18 (5) “An arrested or detained person shall be informed about his/her rights and the grounds for restriction of his/her liberty upon his/her arrest or detention. The arrested or detained person may request the assistance of a defender upon his/her arrest or detention, the request shall be met”. CONSTITUTION, Article 18 (5). In addition, under Article 42 (3) “The right to a defense shall be guaranteed”. CONSTITUTION, Article 42 (3).

The CODE OF CRIMINAL PROCEDURE echoes the guarantees of the right to an attorney. For example, under Article 11 (1-3):

- (1) The court and official in charge of criminal proceedings are obliged to secure the right of defense for the suspect, accused and person on trial, to inform them of their rights, to provide them with an opportunity to defend themselves with any facilities allowable by law, to protect their rights and freedoms.
- (2) The right of defense shall be secured for a person against whom a case for applying the measures of medical coercion is processed, as well as for the one convicted or acquitted on the ground of an appeal filed against the sentence or other summary legal judgment.
- (3) The participation of a defender or legal representative in a criminal proceeding does not deprive the defendant of his right to counsel. CODE OF CRIMINAL PROCEDURE, Article 11 (1-3).

In the event a defendant cannot afford an attorney, the CODE OF CRIMINAL PROCEDURE requires that one be appointed at state expense. For example, under Article 80 (1-4):

- (1) A body in charge of proceedings is obliged, at the request of a suspect, accused or person on trial, to appoint for them a counsel - advocate at the expense of the state if they are indigent to be evidenced by an instrument issued by a body of local self-administration or government. Where the presentation of an insolvency instrument is impossible, the decision on securing the suspect, accused or person on trial with defense counsel at the state’s expense shall be made by a body in charge of proceedings.
- (2) The appointed counsel shall be paid from the state budget. The amount of compensation shall not be lower than the fixed rate.

- (3) Appointed counsel is only used in the cases when the suspect or accused have failed to obtain counsel.
- (4) A state body in charge of proceedings, as well as the Bar or another bar association are entitled to exempt a suspect and accused from the counsel costs in other cases as well that are not indicated in this article. Upon exemption from the payment of counsel costs by a public body in charge of proceedings, the state shall bear all the expenses for the remuneration of counsel. CODE OF CRIMINAL PROCEDURE, Article 80 (1-4).

The CODE OF CRIMINAL PROCEDURE also provides for the appointment of counsel in particular cases defined in Article 81 (a-g). These include cases in which the accused is a juvenile, has a physical or mental disability that impedes his/her ability to assist in his/her defense, does not speak the state language, or has committed an offense punishable by life imprisonment. "A body in charge of proceedings has no right to accept from a suspect, accused, person on trial, a person committed to a measure of medical coercion or his representative a waiver of counsel if:

- a. the suspect, accused or person on trial is minor;
- b. the suspect, accused or person on trial has a bodily or mental defect impeding with his right to counsel;
- c. the suspect, accused or person on trial is not proficient in the language of proceedings;
- d. the suspect, accused or person on trial has committed an offence punishable for life;
- e. the person has been committed to the in-patient forensic-psychiatric examination;
- f. there are contradictions between the interests of the suspects, accused and persons on trial, and even one of them has counsel;
- g. the interests of the victim or civil plaintiff are defended by his representative." CODE OF CRIMINAL PROCEDURE, Article 81 (a-g)

The government pays advocates appointed by the court to represent indigent criminal defendants 2 GEL per day (approximately 1.20 USD). The 2 GEL payment is pitifully inadequate. Moreover, advocates report that they often did not receive any payment from the government for services performed. Until the inaugural session of the Georgian Bar Association [hereinafter "GBA"], Collegium advocates routinely provided services to the indigent. At present, indigent criminal defendants largely are going unrepresented unless a criminal defense advocate agrees to an appointment out of a sense of duty. Collegium advocates still are being called upon by judges to represent the indigent, because the judges have nowhere else to turn.

In June 2005, the Ministry of Justice (MOJ), with funding from Open Society Georgia Foundation and IRIS, a USAID-funded program, began a one-year pilot program to provide legal aid. Advocates will be employed to represent indigent criminal defendants at salaries of 300 to 500 GEL (approximately 200 to 300 USD) a month, with the lower salary for advocates in the regions and the higher amount for those in Tbilisi. These amounts are adequate to attract young advocates. For example, there were approximately 15 applicants for each of the 10 positions available. The advocates hired will practice in Tbilisi and a neighboring region. It is uncertain at this time whether there will still be funding to continue the program after the one-year pilot period.

There is a large reservoir of unsatisfied legal need that is caused by the poverty of the people and their inability to pay for legal representation. This makes it difficult to gauge if there would be a sufficient number of advocates to serve the needs of the populace, if the latter had more money to pay an advocate or civil practitioner to help them with contracts, domestic matters, and dispute

resolution. As it is, judges report that often people take care of these matters without legal representation – including representing themselves in court.

There is little in the way of legal aid services in civil matters. A few NGOs, such as Article 42, the Georgian Young Lawyers Association [hereinafter “GYLA”], and the Center for the Protection of Constitutional Rights [hereinafter “CPCR”], with financial assistance from international organizations, provide some legal aid for the indigent. In certain offices in the regions, the GYLA also provides free legal consultations to those unable to pay and some representation in court. The CPCR, with a grant from ABA/CEELI, established the Woman’s Advocacy Center, which has a gender rights project. As part of this project, the CPCR lawyers represent women in domestic relations and employment matters. It is not clear if these organizations will be able to provide these services without donor funding.

Factor 20: Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

Conclusion	Correlation: Neutral
Arbitration between private parties is a viable alternative to litigation. Advocates advise their clients of its existence and often recommend it. Both domestic and international awards are enforceable. Formal mediation does not exist. Judges attempt to facilitate settlement through informal mediation. Advocates often obstruct mediation in an effort to prolong representation and collect more fees.	

Analysis/Background:

Under Article 4 (1) (a) of the LAW ON ADVOCATES “An advocate has the right: (a) To represent and protect a client, his/her rights and freedoms at the Constitutional, Supreme and Common Courts, in arbitration, in the agencies of inquiry and investigation, toward other physical and legal bodies”. LAW ON ADVOCATES, Article 4 (1) (a). Although this does not mandate that an advocate advise about arbitration, the fact that arbitration proceedings are mentioned indicates the recognized use of arbitration in appropriate matters.

Mention of arbitration and other alternative dispute resolution [hereinafter “ADR”] techniques are also contained in the CIVIL PROCEDURE CODE and the LAW ON PRIVATE ARBITRATION. For example, under Article 12 of the CIVIL PROCEDURE CODE a matter concerning property rights “may be referred to an arbitrator by agreement of the parties”. CIVIL PROCEDURE CODE, Article 12. In addition, the LAW ON PRIVATE ARBITRATION contains detailed provisions governing all aspects of arbitration, states that it shall be binding and subject to only limited challenge in the courts.

Essentially, parties are free to include arbitration clauses in private contracts. Anyone may be appointed as an arbitrator unless he/she exhibits a “lack of legal capacity”, has committed an “intentional crime”, or is related to a party. LAW ON PRIVATE ARBITRATION, Article 8. It is reported that all practicing arbitrators are in fact advocates and most are former judges. There are several advocates in Tbilisi who have an active arbitration practice.

Advocates report that they often recommend arbitration to their clients, since arbitration generally takes a shorter time to resolve a dispute than litigation. However, interviewees also report that arbitration is not widely popular because clients are reluctant to give up the right they have to appeal from a court judgment.

Mediation by private mediators does not exist in Georgia. Judges report that they routinely inform parties to litigation that settlement is an alternative to litigation and attempt to informally mediate civil cases and thus encourage settlements. They relate that not infrequently advocates obstruct these efforts because they do not deem it in their financial interest to resolve a case without a trial. The DRAFT CODE OF ETHICS includes a requirement that an advocate must always attempt to settle a case, which might promote more participation in ADR. DRAFT CODE OF ETHICS, Article 8 (2).

V. Professional Associations

Factor 21: Organizational Governance and Independence

Professional associations of lawyers are self-governing, democratic, and independent from state authorities.

Conclusion	Correlation: Neutral
When the Georgian Bar Association [hereinafter “GBA”] is established, there will be, in accordance with the LAW ON ADVOCATES, a democratic, independent, and self-governing professional association for advocates. At present, the Collegium and the Georgian Young Lawyers Association [hereinafter “GYLA”] function democratically, independently, and successfully as professional associations for lawyers.	

Analysis/Background:

The CONSTITUTION guarantees freedom of association. For example, under Article 26 (1) “Everyone shall have the right to form and join public associations, including trade unions.” CONSTITUTION, Article 26 (1). The LAW ON ADVOCATES also recognizes the independence of advocates by stating that “An advocate is a person of independent profession, which obeys only the laws and norms of professional ethics, and is a member of the Georgian Bar Association.” LAW ON ADVOCATES, Article 1 (2). In addition, Article 20 (1) states that the “Georgian Bar Association, is a legal body of public law based on personal membership” LAW ON ADVOCATES, Article 20 (1), the basic principles and activities of which are determined by the GBA’s Charter. LAW ON ADVOCATES, Article 20 (2).

In terms of organization Article 23 (1-3) of the LAW ON ADVOCATES sets out in detail the GBA’s organizational structure. In addition, Articles 24-31 details the responsibilities, operations, and functions of the chairperson and each governing body and provides for the democratic election of the chairperson and committee members. Furthermore, it provides for the creation of a charter by the GBA, which will be its governing document, within the parameters of the LAW ON ADVOCATES. The GBA CHARTER requires that members pay annual dues. GBA CHARTER, Article 8 (2) (b).

At the inaugural congress of the GBA, the adoption of the GBA CHARTER and the election of the chairperson and committee members were accomplished in a transparently democratic manner. However, the legitimacy of the proceedings is in doubt. For example, at least two lawsuits have been initiated: one in the Common Court challenging the legitimacy of the formation of the GBA because of procedural defects that occurred during its inaugural congress e.g., the absence of a quorum when the GBA CHARTER was adopted, and the failure of any candidate for committee

membership to receive an absolute majority, as required by the LAW ON ADVOCATES; and the second in the Constitutional Court challenging the constitutionality of those provisions in the LAW ON ADVOCATES mandating an integrated bar association for the country. However, the two main factions appear to have reached an agreement that will allow the GBA to continue to exist. If this agreement is finalized, the Common Court case will be withdrawn and a new inaugural assembly convened for the purpose of legitimately adopting a GBA CHARTER and electing GBA officers.

As discussed in the “Organizations of Legal Professionals” section, there exist two large, independent, self-governing, democratic, associations of attorneys: the Collegium and the GYLA. It is believed by many respondents that when a fully functioning GBA emerges, membership in the Collegium will further decrease. No similar sentiment was expressed about the GYLA, and it is expected that it will continue as an active and influential organization.

Although there are differences of opinion among advocates as to whether there should be one unified bar association or several, there is an overwhelming sentiment that any advocate association must be completely independent from the government. Respondents repeatedly expressed their opinion that the government not be involved in the discipline of advocates in any way or exert any influence on GBA officers or members. Along with this opinion, some respondents expressed apprehension that the government might not respect the profession’s independence and that unflagging vigilance to ensure this was necessary.

Factor 22: Member Services

Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

Conclusion	Correlation: Neutral
<p>The Georgian Bar Association [hereinafter “GBA”] is struggling for existence and at present is unable to promote the interests, independence and professionalism of the legal profession. When it is established, in accordance with the GBA CHARTER, it is expected that it will promote the interests and independence of the legal profession and establish professional standards. The Georgian Young Lawyers Association [hereinafter “GYLA”] is at present the most prominent association of advocates that furthers these goals.</p>	

Analysis/Background:

Under the LAW ON ADVOCATES the GBA is the designated body responsible for promoting the interests and independence of the profession, establishing professional standards and regulating advocates, promoting the interests of advocates, and educational opportunities for its members. Charter of the GBA, Article 5: Goals and Functions of the GBA. In terms of professional development, Article 23 (3) states that “The advocates training center is created at the Georgian Bar Association, which implements the professional training of the advocates. The work of the training center of the advocates is determined by the provisions adopted by the association.” LAW ON ADVOCATES, Article 23 (3). In addition, Article 24 outlines the various duties, which the General Assembly of the GBA is responsible for. Specifically, Article 24 (2) (a-l) states that “The General Assembly of the Georgian Bar Association:

- a) Approves the charter of the association and the provisions of the structural units, makes amendments and changes by the majority of votes.

- b) Elects and dismisses the chairperson, members of the executive council, ethics commission and audit commission by a secret ballot and majority of votes of those listed.
- c) Approves the rule of holding the test of advocates, program of test and the provisions of the qualification commission presented by the executive council of the Georgian Bar Association
- d) Approves the Code of Professional Ethics of the Georgian Bar;
- e) Approves the provision about the disciplinary responsibility and disciplinary proceedings of advocates;
- f) Approves the rule of work of the training center;
- g) Approves the expenses of the association for next year;
- h) Hears the reports of the chairmen of the Association, ethics commission and audit commission on their activities;
- i) Approves the membership fee and the time of its payment;
- j) Allocates funds to cover the expenses connected to the general concerns of association;
- k) Approves the amount of salaries, travel expenses, and other administrative expenses of hired staff;
- l) Implements other functions defined by the legislation, this law and statute of the Association. LAW ON ADVOCATES, Article 24 (2) (a-l)

The LAW ON ADVOCATES also establishes the competencies and duties of the Executive Council of the GBA. For example, under Article 26 (4) (a-K) The executive council of the GBA is authorized:

- a) To organize the creation of Unified List of the Georgian Bar, making changes to that and its publication based on the existing data according to the rule established by this law.
- b) To determine the date of testing of advocates, to organize the preparation and holding of the test; to coordinate the testing on whole territory of Georgia.
- c) To organize the vow of an oath by an advocate (writing the affirmation);
- d) To execute decisions of the general assembly, ethics commission and audit commission;
- d¹) To approve the amount of salary of the Chairman of the GBA
- e) To approve the form of the advocate's order;
- f) To approve the form of advocate's certificate;
- g) To establish international contacts, and be a representative of the association in these relationship;
- h) To have personal files processed on advocates and interns;
- i) To be the arbitrator between the arguing members of association, or between the members and their clients based on the bilateral request.

- j) To publish the bulletin of advocates or other publications;
 - k) To implement other functions determined by this law and the Charter of the Association.
- LAW ON ADVOCATES, Article 26 (4) (a-k)

Under Article 20 (2), the work and basic principles of the GBA are determined by the GBA CHARTER. The GBA CHARTER includes the following goals: developing professional skills and qualifications. GBA CHARTER, Article 3 (e). It also provides for establishing an advocates' training center, conducting seminars, discussions, and roundtables for advocates, publishing a journal, and developing a code of ethics. GBA CHARTER, Article 3 (e). Other professional associations are not mandated by any legislation to promote the profession.

Currently most lawyers are preoccupied with the situation concerning the GBA. The Chairperson of the GBA is engaged with a group of advocates, with the support of the ABA/CEELI and the CoE, on the DRAFT CODE OF ETHICS. There is much discussion concerning the independence of the legal profession and of any professional association that is created, the duties and responsibilities of advocates, ways to improve the profession, ethics, and the enforcement of ethical violations.

Finally, the GYLA CHARTER declares as one of its objectives, 'The development of professional skills, qualifications and ethics.' GYLA CHARTER, Article 2.1. The GYLA sponsors workshops on changes in the law when new amendments are enacted.

Factor 23: Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer's role in assisting the public in defending such rights.

Conclusion	Correlation: Neutral
The Georgian Young Lawyer's Association [hereinafter "GYLA"], the Liberty Institute, The Center for the Protection of Constitutional Rights [hereinafter "CPCR"], and Article 42 all publish in the area of civil rights with the aim of educating the public about its rights under the law. In addition, the GYLA, Article 42, and the CPCR provide assistance to the public in defending these rights, but these are primarily dependent on the funding of international donor organizations, such as ABA/CEELI, and have limited resources to carry on this work.	

Analysis/Background:

The LAW ON ADVOCATES does not require the Georgian Bar Association [hereinafter "GBA"] to support public legal education programs. The GBA CHARTER similarly has no such requirement. Although there is no statutory requirement for the GBA to support public legal education programs, the GYLA CHARTER includes as goals, "increasing public awareness of the rule of law, development of laws as the basis for a civil society, and protection of human rights and freedoms." GYLA CHARTER, Article 2 (1). To fulfill these goals the GYLA has a Street Law program in the regions. In addition, the ABA/CEELI, in cooperation with the Georgian Law Students Association (GLSA), has started a Street Law program in Tbilisi. In this program, advocates and law students teach secondary school students about the rule of law and civil rights.

In addition, the GYLA and other NGOs, such as the CPR, the Liberty Institute, and Article 42 -- with donor funding -- issue publications that attempt to educate the public about their civil rights. The GYLA, Article 42, and the CPR also represent indigent criminal defendants and perform advocacy work on behalf of workers against the government. They also speak out against governmental failures to protect the citizenry's constitutional rights. The GYLA is particularly active and vocal about alleged governmental abuse of the CONSTITUTION. It is obvious, based upon the response of those interviewed, that if there were more funding available, these NGOs' actions in this arena would increase.

Finally, Principle 4 of the UN PRINCIPLES states that "Governments and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms." Therefore, if the GBA were to follow the lead of the GYLA and initiate such activities it would help to improve civil liberties within Georgia and improve the reputation, significance, and potentially the economic status of the GBA..

Factor 24: Role in Law Reform

Professional associations of lawyers are actively involved in the country's law reform process.

Conclusion	Correlation: Neutral
Many legal professionals are involved in Georgia's law reform process through involvement in the formation of the Georgian Bar Association [hereinafter "GBA"]. In addition, the Georgian Young Lawyer's Association [hereinafter "GYLA"], through its activities to promote human rights, support an independent judiciary, and eradicate government corruption, is engaged in the country's law reform process.	

Analysis/Background:

The GBA CHARTER sets out as one of a member's duties participation in the drafting of laws. GBA CHARTER, Article 4 (1) (g). Unfortunately, as of the time of this assessment, there is no GBA that is in a position to advocate law reform. At the time this report was being written, members of the GBA were drafting proposed amendments to the LAW ON ADVOCATES to facilitate the adoption of the GBA Charter and the election of the GBA leadership. A group of GBA members will lobby the Georgian Parliament to enact these amendments. Previously, Individual advocates played a significant role in the drafting and adoption of the LAW ON ADVOCATES.

The GYLA is involved in the country's law reform process through its activities promoting human rights, supporting an independent judiciary, and eradicating government corruption. The GYLA CHARTER states that, "Members shall play a significant role in law reform, lobby for the harmonization of Georgian legislation with the international standards of human rights defense, promote the protection of human rights, and cooperate with local and international organizations, including professional unions". GYLA CHARTER, Article 3. The GYLA actively promotes the independence of the judiciary and speaks out against government interference with judges. The GYLA also was very active in working with the government to draft the new CODE OF CRIMINAL PROCEDURE.

Legal professionals do have the opportunity to participate in government legislative working groups, and they often meet with members of the Parliament's Legal Affairs Committee to discuss bar association matters and other legal reforms. In fact, the Legal Affairs Committee often seeks

input from advocates prior to introducing proposed laws or amendments to existing laws for consideration by the Parliament— as it did with the LAW ON ADVOCATES. However, respondents expressed doubt that advocates have much influence over the government with regard to the laws of criminal procedure and the criminal statutes when compared to the influence of the Procuracy.

The ability of legal professionals to influence the government on the issue of judicial independence is unknown. Thus far, at least, the public and private cries of the professional associations, leading legal professionals, NGOs, and international organizations opposing the government's interference with the judiciary, appear to have largely gone unheeded.

LIST OF ACRONYMS

ABA/CEELI:	American Bar Association/Central European and Eurasian Law Initiative
ADR:	Alternative Dispute Resolution
CCBE:	Council of the Bars and Law Societies of the European Community
CLE:	Continuing Legal Education
CoE:	Council of Europe
CPCR:	Center for the Protection of Constitutional Rights
ECHR:	European Court of Human Rights
GBA:	Georgian Bar Association
GEL:	Georgian Lari
GLSA:	Georgian Law Students Association
GYLA:	Georgian Young Lawyer's Association
HCOJ:	High Council of Justice
IDP:	Internally Displaced Person
JRI:	Judicial Reform Index
LPRI:	Legal Profession Reform Index
MOES:	Ministry of Education and Science
MOF:	Ministry of Finance
MOI:	Ministry of Interior
MOJ:	Ministry of Justice
NGO:	Non-Governmental Organization
OSCE:	Organization for Security and Cooperation in Europe